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Liow Keng Luan v Tan Si Hai @ Tan Si Yen & Anor

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HIGH COURT (KUALA LUMPUR) — DIVORCE PETITION NO WA-33–205–04 OF 2023
EVROL MARIETTE PETERS J
9 FEBRUARY 2024

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Family Law — Protection — Injunction against molestation — Wife applied for judicial separation — Wife applied for order that husband be restrained from molesting, harassing, or threatening wife — Wife applied for order that husband be restrained from entering residence — Meaning of 'molestation' — Whether 'non-molestation' order was warranted — Whether court had jurisdiction to exclude husband from residence — Whether there was serious question to be tried — Whether balance of convenience lay in favour of wife — Civil Law Act 1956 s 3(1)(a) — Law Reform (Marriage and Divorce) Act 1976 s 103 — Rules of Court 2012 O 92 r 4

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The respondent and the petitioner were husband and wife before their relationship turned sour due to the allegations of adultery on the part of the respondent and this situation prompted the petitioner to file for judicial separation. In the meantime, the petitioner filed encl 23 pursuant to s 103 of the Law Reform (Marriage and Divorce) Act 1976 ('Act 164') for the following orders: (a) that the respondent including the co-respondent, be restrained until further order from molesting, harassing, or threatening the petitioner; and (b) that the respondent be restrained from bringing, authorising, or allowing his agents, including the co-respondent, from entering the residence at Bukit Damansara ('the Bukit Damansara residence'). It ought to be noted that in addition to the Bukit Damansara residence, the parties owned another house in a condominium known as Binjai On The Park ('the Binjai residence'). The crucial issues under consideration in the present case encompassed three main aspects, namely: (i) delineating the scope and significance of 'molestation'; (ii) assessing the justification for a non-molestation order in the current circumstances; and (iii) determining the extent to which a non-molestation order could impinge upon the respondent's access to the Bukit Damansara residence. Considering the nature of this application as an injunction, additional points of contention revolved around the presence of serious questions to be tried and in whose favour the balance of convenience lay.

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Held, allowing encl 23 in part:

(1) The word 'molestation' was not defined in Act 164. In the case of *Sheng Lien @ Sheng Len Yee v Tan Teng Heng & Anor* [2010] MLJU 2216, the

court granted an injunctive order pursuant to s 103 of Act 164. Such decision was grounded in the wife's apprehension, even in the absence of tangible evidence of physical abuse or a filed police report. The court, in that case, adopted the perspective that it was not obligated to delay intervention until a moment of actual violence transpired. The concept of molestation therefore extended beyond mere physical violence or abuse, encompassing a broad spectrum of behaviour (see paras 10–12).

(2) Recognising that both the act of molestation and the experience of being molested encompassed elements of annoyance, disturbance, and vexation, the court found it imperative to grant a non-molestation order in the present context. Such decision was rooted in the profoundly acrimonious relationship between the involved parties, accentuated by previous distressing encounters that had inflicted considerable emotional turmoil upon the petitioner. For instance, it was undisputed that the respondent had brought the co-respondent to the Bukit Damansara residence, an action that had induced distress, mental anguish, and embarrassment for the petitioner. Further, the respondent's action in cancelling the petitioner's supplementary credit cards and the respondent's refusal to contribute to household expense were perceived by the petitioner as a form of financial coercion which compounded her emotional distress (see paras 13–15).

(3) The court had the power to bar the respondent from Bukit Damansara residence pursuant to s 3(1)(a) of the Civil Law Act 1956 and O 92 r 4 of the Rules of Court 2012. The respondent in the present case had made the highly reprehensible decision to introduce the co-respondent into the Bukit Damansara residence. Living under the same roof was not just inappropriate, it subjected the petitioner to a constant state of harassment, anxiety, and discomfort due to the presence of the respondent. Further, it was an undisputed fact that the Binjai residence offered sufficient space to accommodate a substantial number of guests for the respondent. As the respondent had enjoyed quiet and undisturbed living at the Binjai residence, to the exclusion of the petitioner since 2017, it would only be equitable for the petitioner to be afforded a similar environment at the Bukit Damansara residence (see paras 17, 19 & 22–25).

(4) In this application, it was imperative for the petitioner to convince the court that there was a serious question to be tried, and that the balance of convenience lay in her favour. The necessity for a serious question to be tried pertained to the cause of action between the parties. In the present context, the parties were involved in judicial separation proceedings, and it was evident that there were serious questions to be tried in such proceedings. The balance of convenience and the broader principles of justice favoured the petitioner because: (a) both parties had been residing

in distinct residences, indicating a pre-existing separation; (b) the respondent had enjoyed exclusive and quiet enjoyment of the Binjai residence since 2017, as such, allowing this application would not be prejudicial to the respondent; and (c) the visible presence of the respondent had a discernible impact on the petitioner's state of mind, emphasising the need for a resolution that prioritised her emotional welfare (see paras 26–30).

(5) Based on the above findings, the court ordered that the respondent, including the co-respondent, be enjoined until further order, from molesting, harassing, threatening, or otherwise forcing his or her society upon or interfering with the petitioner. However, in the interest of justice and fairness, and in light of the respondent's expressed desire to visit the Bukit Damansara residence, the court had allowed the respondent, by himself only, to enter the Bukit Damansara residence between the hours of 12 noon and 6pm every Saturday (see paras 31–32).

[Bahasa Malaysia summary

Responden dan pempetisyen adalah suami isteri sebelum hubungan mereka menjadi keruh kerana dakwaan zina di pihak responden dan keadaan ini mendorong pempetisyen memfailkan permohonan pemisahan kehakiman. Dalam pada itu, pempetisyen memfailkan lampiran 23 menurut s 103 Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 ('Akta 164') bagi perintah-perintah berikut: (a) supaya responden termasuk responden bersama, dihalang sehingga perintah lanjut daripada mengganggu, mengacau atau mengugut pempetisyen; dan (b) supaya responden dihalang daripada membawa, memberi kuasa, atau membenarkan ejen-ejennya, termasuk responden bersama, daripada memasuki kediaman di Bukit Damansara ('kediaman Bukit Damansara tersebut'). Perlu diingat bahawa selain kediaman Bukit Damansara tersebut, pihak-pihak tersebut memiliki sebuah lagi rumah di sebuah kondominium yang dikenali sebagai Binjai On The Park ('kediaman Binjai tersebut'). Isu-isu penting yang dipertimbangkan dalam kes ini merangkumi tiga aspek utama, iaitu: (i) menggariskan skop dan kepentingan 'gangguan'; (ii) menilai justifikasi bagi perintah halangan mengganggu dalam keadaan semasa; dan (iii) menentukan sejauh mana perintah halangan mengganggu boleh menjejaskan akses responden ke atas kediaman Bukit Damansara tersebut. Memandangkan sifat permohonan ini sebagai injunksi, pertikaian-pertikaian tambahan berkisar tentang kewujudan persoalan-persoalan serius yang perlu dibicarakan dan di pihak mana imbangan kemudahan terletak.

Diputuskan, membenarkan sebahagian lampiran 23:

(1) Perkataan 'gangguan' tidak ditakrifkan dalam Akta 164. Dalam kes *Sheng Lien @ Sheng Len Yee v Tan Teng Heng & Anor* [2010] MLJU 2216, mahkamah memberikan perintah injunksi menurut s 103 Akta 164.

Keputusan tersebut adalah berdasarkan kebimbangan isteri, walaupun tanpa keterangan nyata penderaan fizikal atau laporan polis yang difailkan. Mahkamah dalam kes tersebut menerima pakai perspektif bahawa ia tidak perlu menangguhkan campur tangan sehingga satu saat keganasan sebenar berlaku. Oleh itu, konsep gangguan adalah melampaui keganasan fizikal atau penderaan semata-mata, merangkumi spektrum tingkah laku yang luas (lihat perenggan 10–12).

(2) Menyedari bahawa kedua-dua tindakan mengganggu dan pengalaman diganggu merangkumi unsur-unsur kejengkelan, gangguan dan menyakitkan hati, mahkamah mendapati adalah mustahak untuk memberikan perintah halangan mengganggu dalam konteks semasa. Keputusan sedemikian berakar umbi daripada hubungan yang sangat teruk antara pihak yang terlibat, yang diserlahkan oleh pertemuan yang menyakitkan hati sebelum ini yang telah menimbulkan pergolakan emosi yang besar kepada pempetisyen. Sebagai contoh, tidak dapat dipertikaikan bahawa responden telah membawa responden bersama ke kediaman Bukit Damansara tersebut, satu tindakan yang telah menyebabkan kesakitan hati, kegusaran mental, dan memalukan pempetisyen. Selanjutnya, tindakan responden membatalkan kad kredit tambahan pempetisyen dan keengganan responden untuk menyumbang kepada perbelanjaan isi rumah dianggap oleh pempetisyen sebagai satu bentuk paksaan kewangan yang menambahkan tekanan emosinya (lihat perenggan 13–15).

(3) Mahkamah mempunyai kuasa untuk menghalang responden daripada memasuki kediaman Bukit Damansara tersebut menurut s 3(1)(a) Akta Undang-undang Sivil 1956 dan A 92 k 4 Kaedah-Kaedah Mahkamah 2012. Responden dalam kes ini telah membuat keputusan yang sangat tercela untuk memperkenalkan responden bersama ke dalam kediaman Bukit Damansara tersebut. Hidup di bawah satu bumbung bukan sahaja tidak sesuai, malah menyebabkan pempetisyen sentiasa mengalami gangguan, kebimbangan dan ketidakselesaan yang berterusan kerana kehadiran responden. Tambahan pula, adalah fakta yang tidak dapat dipertikaikan bahawa kediaman Binjai tersebut menawarkan ruang yang mencukupi untuk menampung sejumlah besar tetamu untuk responden. Memandangkan responden telah menikmati kehidupan yang tenang dan tidak diganggu di kediaman Binjai tersebut tanpa kehadiran pempetisyen sejak 2017, adalah adil bagi pempetisyen untuk diberikan persekitaran yang sama di kediaman Bukit Damansara tersebut (lihat perenggan 17, 19 & 22–25).

(4) Dalam permohonan ini, adalah mustahak bagi pempetisyen untuk meyakinkan mahkamah bahawa terdapat persoalan yang serius untuk dibicarakan, dan bahawa imbangan kemudahan berpihak kepadanya. Keperluan untuk persoalan serius untuk dibicarakan adalah berkaitan

dengan kausa tindakan antara pihak-pihak. Dalam konteks semasa, pihak-pihak terlibat dalam prosiding pemisahan kehakiman, dan ternyata terdapat persoalan-persoalan serius yang perlu dibicarakan dalam prosiding tersebut. Imbangan kemudahan dan prinsip keadilan yang lebih luas memihak kepada pempetisyen kerana: (a) kedua-dua pihak telah tinggal di kediaman yang berbeza, menunjukkan perpisahan yang sedia ada; (b) responden telah menikmati keseronokan eksklusif dan tenang di kediaman Binjai tersebut sejak 2017, oleh itu, membenarkan permohonan ini tidak akan memudaratkan responden; dan (c) kehadiran diri responden mempunyai kesan yang boleh dilihat pada keadaan minda pempetisyen, menekankan keperluan untuk membuat keputusan yang mengutamakan kebajikan emosi pempetisyen (lihat perenggan 26–30).

(5) Berdasarkan dapatan-dapatan di atas, mahkamah memerintahkan supaya responden, termasuk responden bersama, dihalang sehingga perintah selanjutnya, daripada mengganggu, mengacau, mengugut, atau sebaliknya memaksa masyarakatnya ke atas atau campur tangan dengan pempetisyen. Walau bagaimanapun, demi keadilan dan kesaksamaan, dan berdasarkan hasrat responden untuk melawat kediaman Bukit Damansara tersebut, mahkamah telah membenarkan responden sahaja untuk memasuki kediaman Bukit Damansara tersebut antara jam 12 tengah hari dan jam 6 petang setiap Sabtu (lihat perenggan 31–32).]

Cases referred to

ABC & Anor v JKL [2020] 11 MLJ 421, HC (refd)
Bendall v McWhirter [1952] 2 QB 466, CA (refd)
Chan Ah Moi @ Chan Kim Moy v Phang Wai Ann [1995] 3 MLJ 130; [1995] 3 CLJ 846, HC (refd)
George v George [1986] 2 FLR 347, CA (refd)
Gurasz v Gurasz [1969] 3 All ER 822, CA (refd)
Jayakumari a/p Arul Pragasam v Suriya Narayanan a/l V Ramanathan [1996] 4 MLJ 421, HC (folld)
Johnson v Walton [1990] FCR 568; [1990] 1 FLR 350, CA (folld)
Lee Sook Kwan v Yap Woon Woi [2010] MLJU 2215; [2010] 11 MLRH 167, HC (refd)
Sheng Lien @ Sheng Len Yee v Tan Teng Heng & Anor [2010] MLJU 2216; [2010] 11 MLRH 849, HC (refd)
Silverstone v Silverstone [1953] P 174 (refd)
Tan Boon Lang v Lim Tiong Sin [1997] 4 MLJ 485, HC (refd)
Tien Ik & Ors v Kuok Khoon Hwong Peter [1992] 2 MLJ 689; [1993] 1 CLJ 9, SC (refd)
Vaughan v Vaughan [1973] 3 All ER 449, CA (refd)

Legislation referred to

Civil Law Act 1956 s 3(1)(a)
Law Reform (Marriage and Divorce) Act 1976 s 103
High Court Rules [BN] O 86 r 4
Rules of Court 2012 s 103

YN Foo (with Kiran Dhaliwal and John Heng) (YN Foo & Partners) for the petitioner.
WH Kan (with Goh Loh Boon and Lim Yee) (WH Kan) for the respondents.

Evrol Mariette Peters J:

INTRODUCTION

[1] This was an application ('this application') by the petitioner wife in encl 23 for the following, namely: (i) that the respondent husband including the co-respondent, be restrained until further order from molesting, harassing, or threatening the petitioner; and (ii) that the respondent be restrained from bringing, authorising, or allowing his agents, including the co-respondent, from entering the residence at Bukit Damansara ('the Bukit Damansara residence').

THE FACTUAL BACKGROUND

[2] The petitioner and respondent, (collectively, 'the parties'), both aged 64 at the time of the hearing of this application, registered their marriage in Malaysia in October 1987, and were blessed with two daughters, born in 1991 and 1997 respectively.

[3] Throughout their married life, the parties resided in various locations. This was due to the respondent's professional obligations as a nephrologist at Prince Court Hospital which necessitated a dynamic lifestyle, prompting the family to divide their time between residences in Bandar Utama and Binjai on the Park ('the Binjai residence'). Notably, the petitioner's presence at the Binjai residence dwindled progressively, culminating in a complete cessation of visits in the year 2017. The petitioner eventually moved to their residence in Bukit Damansara ('the Bukit Damansara residence') in 2021.

[4] As the years unfolded, the marital bond began to fray, marked by allegations of adultery and unreasonable behaviour on the part of the respondent. These issues escalated, prompting the petitioner to file for judicial separation, in April 2023. This was followed by a response by the respondent in June 2023.

[5] In July 2023, the petitioner filed this application pursuant to s 103 of the Law Reform (Marriage and Divorce) Act 1976 ('Law Reform (Marriage and Divorce) Act'), which reads:

> Section 103 — *Injunctions against molestation*
>
> The court shall have power during the pendency of any matrimonial proceedings or on or after the grant of a decree or divorce, judicial separation or annulment, to order any person to refrain from forcing his or her society on his or her spouse or former spouse and from other acts of molestation. (Emphasis added.)

THE ISSUES

[6] The pivotal matters under consideration in the present case encompassed three main facets, namely: (i) delineating the scope and significance of 'molestation'; (ii) assessing the justification for a non-molestation order in the current circumstances; and (iii) determining the extent to which a non-molestation order could impinge upon the respondent's access to the Bukit Damansara residence.

[7] Given the nature of this application as an injunction, additional points of contention revolved around the presence of serious questions to be tried and in whose favour the balance of convenience lay.

[8] This application was allowed partially for the following reasons.

CONTENTIONS, FINDINGS, AND EVALUATION

The meaning of 'molestation'

[9] At the outset, it was crucial to determine the meaning of 'molestation' in the context of s 103 of the Law Reform (Marriage and Divorce) Act.

[10] The word 'molestation' is not defined in the Law Reform (Marriage and Divorce) Act. This was acknowledged by Abdul Malik Ishak J (as he then was) in *Chan Ah Moi @ Chan Kim Moy v Phang Wai Ann* [1995] 3 MLJ 130; [1995] 3 CLJ 846 in the following passage, where reference was made to the English cases of *Vaughan v Vaughan* [1973] 3 All ER 449, *George v George* [1986] 2 FLR 347 and *Johnson v Walton* [1990] 1 FLR 350, as well as the *Britannica World Language Edition of the Oxford Dictionary*:

> Unfortunately, the word 'molestation' is not defined in the Act. *The Britannica World Language Edition of The Oxford Dictionary* defines 'molestation' as:
>
> > *the action of molesting or condition of being molested; annoyance, disturbance, vexation.*

Whereas the *Pocket Oxford Dictionary of Current English* compiled by FG Fowler & HW Fowler, (4th Ed) defines 'molestation' simply as 'troublesome'. Davies LJ, in *Vaughan v Vaughan* [1973] 3 All ER 449 CA, referred to two dictionaries for the meaning of the word 'molestation'. His Lordship said this (p 452):

> According to counsel for the husband we find two different definitions respectively in the *Concise Oxford Dictionary* and in the *Shorter Oxford Dictionary*. The former gives the meaning for 'molest' as: 'meddle hostilely or injuriously'. The *Shorter Oxford Dictionary* gives a much wider definition of these terms: *'to cause trouble; to vex; to annoy; to put to inconvenience.*

George v George [1986] 2 FLR 347 and *Johnson v Walton* [1990] 1 FLR 350 adopted Davies LJ's approach to the meaning of 'molestation' in *Vaughan v Vaughan*. (Emphasis added.)

[11] In the case of *Sheng Lien @ Sheng Len Yee v Tan Teng Heng & Anor* [2010] MLJU 2216; [2010] 11 MLRH 849, the court granted an injunctive order pursuant to s 103 of the Law Reform (Marriage and Divorce) Act. Such decision was grounded in the wife's apprehension, even in the absence of tangible evidence of physical abuse or a filed police report. The court, in that case, adopted the perspective that it was not obligated to delay intervention until a moment of actual violence transpires, asserting that 'the court does not have to wait for the day when violence occurs before it grants such order, that would be too late'. This underscores the court's proactive stance in safeguarding the well-being of individuals and preventing potential harm before it materialises.

[12] The concept of molestation therefore extends beyond mere physical violence or abuse, encompassing a broad spectrum of behaviour. This principle is underscored by the precedent set in the case of *Lee Sook Kwan v Yap Woon Woi* [2010] MLJU 2215; [2010] 11 MLRH 167, where Her Ladyship Yeoh Wee Siam J (as she then was) drew from the case of *Chan Ah Moi @ Chan Kim Moy v Phang Wai Ann* to grant a non-molestation order.

Whether 'non-molestation' order was warranted

[13] Recognising that both the act of molestation and the experience of being molested encompass elements of annoyance, disturbance, and vexation, I found it imperative to grant a non-molestation order in the current context. Such decision was rooted in the profoundly acrimonious relationship between the involved parties, accentuated by previous distressing encounters that had inflicted considerable emotional turmoil upon the petitioner.

[14] For instance, it was undisputed that the respondent had brought the co-respondent to the Bukit Damansara residence, an action that had induced distress, mental anguish, and embarrassment for the petitioner. Although both

the respondent and co-respondent had disputed the latter's involvement in the breakdown of the marriage of the parties, it was essential to note that the petitioner had explicitly named the co-respondent in the petition for judicial separation. The determination of this specific issue has yet to be made.

[15] Furthermore, the petitioner experienced heightened pressure and anxiety due to the respondent's actions, including cancellation of the petitioner's supplementary credit cards and the respondent's refusal to contribute to household expenses. This behaviour, perceived by the petitioner as a form of financial coercion, compounded her emotional distress.

Whether this court had jurisdiction to exclude respondent from the Bukit Damansara residence

[16] In the present case, the petitioner not only sought a non-molestation order under s 103 of the Law Reform (Marriage and Divorce) Act, but she had also prayed for an order to bar the respondent from the Bukit Damansara residence, until the disposal of the hearing of the judicial separation petition. The pivotal question at hand, therefore, was whether this court possessed the jurisdiction to grant an exclusion order.

[17] In my view, the court indeed had the power to bar the respondent from the Bukit Damansara residence. I drew guidance from the precedent set in the case of *Jayakumari a/p Arul Pragasam v Suriya Narayanan a/l V Ramanathan* [1996] 4 MLJ 421, where the court had derived its jurisdiction from s 3(1)(a) of the Civil Law Act 1956, and the English cases of *Gurasz v Gurasz* [1969] 3 All ER 822 which delineated the common law position in England by citing *Bendall v McWhirter* [1952] 2 QB 466 and *Silverstone v Silverstone* [1953] P 174. The relevant provision, s 3(1)(a) of the Civil Law Act states:

> Section 3 — Application of UK common law, rules of equity and certain statutes
>
> (1) Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia, the Court shall —
>
> (a) in Peninsular Malaysia or any part thereof, *apply the common law of England and the rules of equity as administered in England on the 7 April 1956;* ... (Emphasis added.)

[18] In *Jayakumari a/p Arul Pragasam v Suriya Narayanan a/l V Ramanathan*, addressing the matter of whether one spouse could restrict the other's access to the matrimonial home, James Foong J (as he then was) articulated the following position:

> As the English common law prior to 7 April 1956 is applicable to our country, the

English case of *Silverstone v Silverstone* [1953] P 174 may be of relevance as regards jurisdiction. Here, Pearce J expressed as follows at p 177:

> In my view, she has a right to be in a matrimonial home while a petition is pending before this court, and this court is entitled to protect that right and ensure that pressure is not put on a wife to abandon her petition by evicting her from the home. In the present case, I am satisfied that if I let the husband go back to the house I am really driving her out.

By the same token, *the court should have jurisdiction to evict a husband from the matrimonial home pending the trial of the action,* if there is evidence based on considered principles to do so, *otherwise the wife will be bullied out of her remedy or deterred by pressure from seeking the help of the court.*

This proposition of the wife's right to remain in the matrimonial home is based on the ruling by Denning LJ (as he then was) in the case of *Bendall v McWhirter* [1952] 2 QB 466, where he affirmed that a wife is not without rights in the matrimonial home even though it belongs to the husband, and her right to stay in the matrimonial home is presumed in law to have been conferred upon her by her husband flowing from the concept of a marriage.

This issue of jurisdiction is further confirmed by the English courts in the case of *Gurasz v Gurasz* [1969] 3 All ER 822 which is a strong persuasive authority to our laws and can even be applicable under s 47 of the Act which provides that:

> (47) Principles of law to be applied
>
> Subject to the provisions contained in this Part, the court shall in all suits and proceedings hereunder act and give relief on principles which in the opinion of the court are, as nearly as may be, conformable to the principles on which the High Court Justice in England acts and gives relief in matrimonial proceedings.

In the case of *Gurasz v Gurasz*, the parties being husband and wife lived with four children in a matrimonial house jointly owned by the parties. The wife due to intolerable conditions left the matrimonial home with the children. The husband remained in the house and subsequently took in another man to live with him. The wife sought relief from the court to evict the husband and to reinstate her possession of the house with the children. The county court judge granted her application and on appeal to the Court of Appeal, Denning MR reiterated the position of the wife's right to occupy the matrimonial home and to evict an errant husband under common law. This proposition is common law was supported by fellow panel judge, Edmund Davies LJ in the same case when he expressed that:

> that such a general power (the power to evict a husband from the matrimonial home) unquestionably existed has, if I may say so, been amply and convincingly demonstrated by Lord Denning MR.

Based on the aforesaid authorities, this court is convinced that it has jurisdiction to entertain, and if found satisfied, to grant the second relief of the petitioner's application in encl 8. (Emphasis added.)

[19] I also maintained the view that O 92 r 4 of the Rules of Court 2012

('Rules of Court') provided ample authority for this court to grant an order excluding the respondent from accessing the Bukit Damansara residence. The pertinent provision reads:

> Order 92 — Miscellaneous
>
> Rule 4 — Inherent powers of the Court
>
> For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent *powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.* (Emphasis added.)

[20] Reference was additionally made to the case of *Tan Boon Lang v Lim Tiong Sin* [1997] 4 MLJ 485, where the Brunei High Court asserted its inherent jurisdiction under the Brunei High Court Rules O 86 r 4 (the equivalent of O 92 r 4 of the Rules of Court) to mandate a party to vacate the matrimonial house, notwithstanding proprietary rights, as long as matrimonial proceedings were pending. The court, in that case, emphasised the necessity to ensure that a party has the right to pursue legal remedies without pressure or intimidation, allowing them to proceed freely with matrimonial proceedings.

[21] Furthermore, in *Chan Ah Moi @ Chan Kim Moy v Phang Wai Ann*, in deciding whether to make an order to exclude one spouse from the matrimonial home, guidance was drawn from the insights in *Family Law* by PJ Pace, where learned author articulated:

> While it has been said that an injunction excluding one spouse from the matrimonial home (as opposed to one restraining molestation) is a 'drastic order' (*Hall v Hall* [1971] CA), it is recognised that it is 'fair, just and reasonable' that a spouse should be excluded, the Court will so order (*Walker v Walker* [1978] CA). In deciding whether to make such an order the Court will have regard to such matters as:
>
> (a) *the parties' behaviour;*
>
> (b) the effect on the children if exclusion is, or is not, ordered;
>
> (c) the personal circumstances of the person sought to be excluded;
>
> (d) *the accommodation available to the parties;*
>
> (e) the likelihood of injuries to the parties; and
>
> (f) the parties' health. (Emphasis added.)

[22] The palpable tension in the relationship between the parties was not only evident but reached a point of strain that could not be ignored. To compound the already delicate circumstances, the respondent made the highly

reprehensible decision to introduce the co-respondent into the Bukit Damansara residence. This move, devoid of sensitivity, exacerbated an already difficult situation.

[23] Living under the same roof was not just inappropriate; it subjected the petitioner to a constant state of harassment, anxiety, and discomfort due to the presence of the respondent. Drawing guidance from the precedent set in the case of *Johnson v Walton* [1990] FCR 568; [1990] 1 FLR 350, it was clear that 'molestation also applies to any conduct which intentionally causes harassment'.

[24] The respondent argued that being excluded from the Bukit Damansara residence would be unfair, citing his desire to host friends at that location. In my view, the respondent's contention was bereft of merit, given the unchallenged fact that the Binjai residence offers sufficient space to accommodate a substantial number of guests. Considering the heightened animosity between the parties, it would be more suitable for the respondent to host gatherings at the Binjai residence.

[25] Furthermore, as the respondent has enjoyed quiet and undisturbed living at the Binjai residence, to the exclusion of the petitioner, since 2017, it would only be equitable for the petitioner to be afforded a similar environment at the Bukit Damansara residence.

Whether there were serious questions to be tried

[26] In this application, it was imperative for the petitioner to convince this court that there is a serious question to be tried, and that the balance of convenience lies in her favour.

[27] The necessity for a serious question to be tried pertains to the cause of action between the parties. My reference point for this principle was gleaned from the case of *ABC & Anor v JKL* [2020] 11 MLJ 421, wherein the Supreme Court decision in *Tien Ik & Ors v Kuok Khoon Hwong Peter* [1992] 2 MLJ 689; [1993] 1 CLJ 9, was referred to. In the latter case, Hj Mohd Jemuri Serjan SCJ articulated the significance of a serious question to be tried in the following passage:

> In an application for an interim injunction, the court is not called upon to make any final decision on any question of fact. What is required at that stage is for the learned judge to decide on the affidavits available before him that the claim in the originating summons is not frivolous or vexatious, in other words, *there is a serious question to be tried, and having so decided he must go on to consider the question of balance of convenience.* (Emphasis added.)

[28] In the current context, parties are involved in judicial separation proceedings, and it was evident that there are serious questions to be tried in such proceedings.

Where the balance of convenience lay

[29] It was also my view that the balance of convenience and the broader principles of justice favoured the petitioner for several compelling reasons. Firstly, both parties have been residing in distinct residences, indicating a pre-existing separation. Secondly, the respondent has enjoyed exclusive and quiet enjoyment of the Binjai residence since 2017. As such, allowing this application would not be prejudicial to the respondent.

[30] Furthermore, it was imperative to take into account the emotional wellbeing of the petitioner. The visible presence of the respondent had a discernible impact on the petitioner's state of mind, emphasising the need for a resolution that prioritises her emotional welfare.

CONCLUSION

[31] Counsel for the respondent argued that allowing this application would be unjust, invoking the adage that a man's home is his castle. However, it was essential to emphasise to the respondent that the sanctity of 'a man's home is his castle' holds true, but only 'until his queen arrives'. Consequently, it was ordered that the respondent, including the co-respondent, be enjoined until further order, from molesting, harassing, threatening, or otherwise forcing his or her society upon or interfering with the petitioner.

[32] However, in the interest of justice and fairness, and in light of the respondent's expressed desire to visit the Bukit Damansara residence, allowance was made for the respondent, by himself only, to enter the Bukit Damansara residence between the hours of 12 noon and 6pm every Saturday.

Enclosure 23 allowed in part.

Reported by Dzulqarnain Ab Fatar